

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

BRANDON LESTER §
§
vs. § CIVIL ACTION NO.
§ 7:15-CV-665
SMC TRANSPORT, LLC AND ISRAEL §
MARTINEZ, JR. AND SALINAS §
EXPRESS, LLC §
§

ORAL AND VIDEOTAPED DEPOSITION
EDUARDO LOZANO
April 18, 2016

ORAL AND VIDEOTAPED DEPOSITION OF EDUARDO LOZANO, produced as a witness at the instance of the Plaintiff and duly sworn, was taken in the above-styled and numbered cause on April 18, 2016, from 5:29 p.m. to 6:53 p.m., before Annette E. Escobar, Certified Shorthand Reporter in and for the State of Texas, reported by computerized stenotype machine at the offices of La Posada Hotel, La Posada Hotel, 1000 Zaragoza Street Laredo, The Blue Bonnet Conference Room, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.



1 P-R-O-C-E-D-I-N-G-S

2 Whereupon,

3 5:29 P.M.

4 THE VIDEOGRAPHER: We are on the record.

5 Today's date is April 18th of the year 2016. The time is
6 approximately 5:29 in the afternoon, and you may proceed
7 with the deposition, please.

8 EDUARDO VICENTE LOZANO,

9 having been first duly sworn, testified as follows:

10 EXAMINATION

11 BY MR. SKAFF:

12 Q Can I get you to go ahead and state your full
13 name, please.

14 A Eduardo Vicente Lozano.

15 Q Mr. Lozano, my name is Victor Skaff. I'm an
16 attorney from Roanoke, Virginia representing Brandon
17 Lester in a lawsuit that he's filed against SMC Transport,
18 Mr. Martinez and Salinas Express.

19 Have you ever given a deposition before?

20 A No.

21 Q Okay. I'm just going to ask you some questions,
22 a little bit about your background, what happened on the
23 date of this incident.

24 If you don't understand what I'm asking
25 you, please let me know and I'll be happy to rephrase the

1 A He either calls or sends a text message and
2 waits until we answer it.

3 Q Are there -- on the tractors that you all drive
4 are there any other tracking mechanisms besides that?

5 A No.

6 Q No?

7 A No.

8 Q In listening to Mr. Martinez testify, he
9 indicated there is GPS system built into them?

10 A Not the truck that I got. Not that I know of.
11 Like I said, he always calls me to see where I'm at or
12 sends me a message.

13 Q Is there a GPS system in one that you drive that
14 sort of tells how where you can go or how do you know the
15 directions?

16 A I've been doing it for so long.

17 Q Do you ever a GPS that's in your tractor?

18 A I ain't got one.

19 Q Okay. Do you know whether or not there are GPS
20 systems in the other tractors that Salinas has?

21 A No.

22 Q You don't know?

23 A I don't know.

24 Q Okay. So you are there with Roy when his
25 tractor breaks down at the truck stop?

1 A No, we had already taken off from the truck
2 stop. He told me he was having trouble.

3 Q Right. And so -- I'm sorry. I misunderstood
4 you. So were you with him when it broke down at the rest
5 area?

6 A Yeah. It was a little bit before the rest area
7 so I pulled him in there to pull him out of the highway.

8 Q Okay. So what happened next?

9 A After that I left from there because I couldn't
10 stay there. So I went down to Roanoke a little further
11 went to the truck stop so I can park.

12 Q And what did you do after that?

13 A I just went to bed and went -- sorry.

14 (Phone Interruption.)

15 A I just waited until the morning and see what we
16 were going to do.

17 Q Okay. So what was your next involvement in all
18 of this?

19 A After that I went back to the rest area to see
20 if Roy was able to get into a parking spot and see what he
21 was going to do. He said, well, I might have to leave my
22 truck here. He spoke to the person over there at the rest
23 area telling them he was going leave the truck there for a
24 few days. Got in the truck with me and came back, came
25 down here.

1 Q Let me show you a -- let me show you this which
2 is, I'll represent to you is an overhead view of the rest
3 area where the accident at issue in this case occurred.

4 Does that --

5 A Yeah.

6 Q Does that appear to be that to you?

7 A Pretty much.

8 Q Okay. So when you, when you pulled -- so you
9 told -- you said you pulled Ray's tractor trailer into
10 this rest area?

11 A Yeah.

12 Q When you parked it and you left it there and you
13 all came back where was it positioned?

14 A Right here where you see that first truck in the
15 parking spot.

16 Q Can I get you to take that Sharpie in front of
17 you and just put an X where the tractor trailer was
18 positioned when you first pulled it in and you guys left
19 to come back to Texas?

20 A Well, when I first pulled it in he was up here
21 (Indicating) on the first spot.

22 Q Okay. And so just for the record -- well, can
23 you -- I forgot we're on video here.

24 So can you show the videographer where
25 you're talking about?

1 A About right here.

2 Q That's when you first pulled it in?

3 A When I first pulled him and I was unhooking
4 because there is signs there that said no parking but
5 there were other trucks right there. So I got him off the
6 highway, just a little bit more safer onto to the ramp.
7 State trooper came in and he got after me. I said I'm not
8 going to be here, I'm just pulling him in here to get him
9 off the highway. Well, you can't pull him. I was going
10 to try to pull him into parking spot over here. So I had
11 to let him go there and I went to the truck spot.

12 Then by the time, I came back in the
13 morning to check up on him he was parked in that spot.

14 Q Okay. So that's what I would like for you to
15 mark with an X. Did you do that?

16 A Well, I marked it where he was first.

17 Q Okay.

18 A And then where he was in the morning.

19 Q Okay. All right. Just hold on to that.

20 MR. HEARN: Are we going to mark that as an
21 exhibit --

22 MR. SKAFF: Yes, if we could just mark that
23 as an exhibit, please.

24 (Exhibit marked for identification as
25 Deposition Exhibit Number 7.)

1 Q One is -- you are going to mark --

2 A One is where I left him.

3 Q Okay.

4 A And two is where he was in the morning.

5 Q Okay. When he was in the morning, which way was
6 his tractor pointed?

7 A Just like that one is.

8 Q Okay. So it would be pointed southbound on
9 I-81?

10 A Yeah. Yes, sir.

11 Q Okay.

12 MR. HEARN: And that photo there printed is
13 marked for identification purposes Exhibit Number 7.

14 MR. SKAFF: Correct.

15 Q (By Mr. Skaff) Okay. Do you remember -- do you
16 have any recollection about the date when that was?

17 A Might have been about three, four days before.

18 Q Before the accident occurred.

19 So if the accident occurred October 26,
20 2015, that would have been in and around October 22 or 23?

21 A Somewhere around there.

22 Q Okay. All right. And then so, so what happened
23 next?

24 A I came back down here Roy, helped me drive to
25 deliver the load that I had and whatever he did while I

1 was asleep, arrangements, I didn't find out.

2 Q Okay. Did you ever -- as you all traveled back
3 from Virginia to Texas, did you hear Roy make any kind of
4 arrangements about what needs to be done?

5 A No.

6 Q When, when you all left Roy's tractor trailer up
7 there in Virginia, did you, was it a full load?

8 A Yeah.

9 Q Any recollection about what it was?

10 A I couldn't tell you.

11 Q Do you know where it was supposed to be
12 delivered?

13 A Here in Laredo.

14 Q So you guys ultimately get back to Zapata?

15 A Yeah.

16 Q Okay. When did you next become involved in
17 getting back up to Virginia?

18 A Back when I got to Zapata Rudy told me if I
19 could go back to pick up the trailer.

20 Q Rudy asked you to go back?

21 A Yeah.

22 Q And what was your understanding of what, who all
23 was to go and what, what --

24 A I thought I was going to be me and Roy. I
25 didn't -- by the time I knew it Israel was there and then

1 we picked up Art.

2 Q So when did, when did Mr. Martinez become
3 involved or where -- and where did Mr. Martinez become
4 involved?

5 A He rode with me on the way to the Valley. We
6 ended up hooking up my truck to the SMC truck.

7 Q So who rode from here Zapata to the Valley?

8 A Israel and me.

9 Q Just you two?

10 A Yeah.

11 Q And you were driving the unit that you typically
12 drove?

13 A Yeah. I think it was -- we took turns on that
14 one. I'm not -- I don't remember exactly, but I think we
15 took turns.

16 Q Is this something that you expected you were
17 going to get paid for this trip?

18 A I knew I was going to get paid bringing the
19 trailer back.

20 Q Did you ultimately get paid for bringing it?

21 A Yeah.

22 Q You did?

23 A Yeah.

24 Q So you and Mr. Martinez drove up to the Valley?

25 A Uh-huh.

1 Q And why -- how did you become aware that you
2 were to stop in the Valley?

3 A We were going to meet Roy in the Valley.

4 Q And why were you going to meet Roy in the
5 Valley?

6 A That's where they hooked my truck up to the back
7 of the SMC truck.

8 Q And why were you going to do that?

9 A To save on fuel, so we don't have to fuel both
10 trucks.

11 Q And how did you become aware that you all were
12 going to do that?

13 A Once I got to the Valley.

14 Q I mean, you were just driving along and somebody
15 told you --

16 A We're going to do this. I mean, it just
17 happened real quick. By the time I knew we were hooking
18 my truck to the trailer.

19 Q How did that -- how did that take place by a
20 telephone call?

21 A No, when we made it to the truck stop.

22 Q Okay. So help me out a little bit.

23 A When we met at the truck stop where we were
24 going to meet Roy, that's when they decided, let's just
25 hook it up, we'll save on the fuel instead of spending on

1 both truck we'll just spend it on one.

2 Q So, so where did you go to hook up with the SMC
3 truck?

4 A Weslaco.

5 Q I'm sorry?

6 A Weslaco, Texas.

7 Q At a facility or --

8 A It was a little fuel stop.

9 Q Tell me a little bit about SMC. What do you
10 know about SMC?

11 A Not much.

12 Q What do you know?

13 A I know that they're cousins related to Salinas.

14 Q Who are they?

15 A The -- Sergio -- most of the drivers they got
16 there, his brothers and his dad so they're all related.

17 Q So Sergio's family is related to the Salinas
18 family?

19 A Yeah.

20 Q Had you met Sergio?

21 A Yeah.

22 Q How many times had you met him before?

23 A We used to work together when we were leased to
24 SMS -- MD.

25 MR. FRANKL: Say that again. You used to

1 work together where.

2 THE WITNESS: MTE I believe -- that's the
3 name of the company.

4 MR. DUNN: Leased on to --

5 THE WITNESS: We were leased on to that
6 company. We were leased on to that company.

7 Q (By Mr. Skaff) What do you mean leased onto that
8 company?

9 A That was before they became Salinas Express they
10 were leased on to another company.

11 Q Had you ever driven an SMC truck before?

12 A No, I just road in it.

13 Q All right. So you come to this fuel stop, you
14 and Mr. Martinez, you come to the fuel stop and who's
15 there?

16 A Roy showed up with the SMC truck and after that
17 Sergio fueled up.

18 Q Was Roy driving the SMC truck?

19 A Yeah.

20 Q And then Sergio came?

21 A Uh-huh.

22 Q Yes?

23 A Yes.

24 Q What is your understanding, if you have any, as
25 to why Sergio came?

1 THE WITNESS: I wasn't going to have time
2 if I got up there to drive back, so I had to get my
3 restart.

4 Q (By Mr. Skaff) So you needed to get your rest, is
5 that what you're saying?

6 A Yes.

7 Q Had you been in that SMC truck before?

8 A No.

9 Q Are you aware or were you aware at the time of
10 logbooks associated with that tractor you all made your
11 trip?

12 A No, nothing. I didn't know nothing whatsoever.
13 I don't know if they did any.

14 Q Did you ever see any at any point on the trip?

15 A No, I didn't see one.

16 Q You're not saying that there wasn't one. You
17 just didn't see one?

18 A I didn't. There might have been one. They
19 might have done it. I was held back in the sleeper. I
20 didn't pay much attention.

21 Q All right. So ultimately you get in Virginia,
22 correct?

23 A Uh-huh.

24 Q Yes?

25 A Yes, sir.

1 Q And you come to the rest area?

2 A Yes, sir.

3 Q Okay. Did you arrive some time in the morning
4 of October the 26th, 2015?

5 A It was late. I couldn't tell you what time it
6 was, but I know late. It was already dark.

7 Q Was it late the night before or was it -- let me
8 ask this question.

9 How long had you all been there before the
10 accident occurred?

11 A I don't remember.

12 Q Was it -- had you slept in the rest stop or
13 something like that?

14 A I went to sleep for a little bit and once I got
15 hooked up to the trailer, I moved my truck out of the way.
16 They have a slot right there. Where Roy was initially
17 parked, I parked across on the other side in front.

18 Q Let's go back then. Tell me when you, when you
19 all first arrived at the rest stop, where were you
20 positioned when you, were you in the back sleeper still?

21 A When we got there, I helped them unhook the
22 truck from there and then we unhooked the trailer from
23 the, Roy's truck and I hooked up to it and moved it out of
24 the way while they started hooking up everything to Roy's
25 truck.

1 Q But you don't have any recollection about the
2 date or the time?

3 A The time I don't remember.

4 Q Okay. But it was dark?

5 A Yeah.

6 Q What was the traffic like off I81 South when you
7 got there?

8 A Calm.

9 Q What was the, sort of, volume of trucks in that,
10 in that rest stop that evening early that morning? Do you
11 have any recollection about that?

12 A Going back to the picture?

13 Q Sure. And you are going -- you are referring to
14 Exhibit Number 7?

15 A Yeah. I know there was trucks parked along the
16 way, Roy's truck.

17 Q Can you again show the videographer what you
18 are --

19 A There was trucks parked along shoulder on the
20 exit ramp.

21 Q Okay.

22 A I got -- I got Roy's trailer out of the way from
23 there and moved over here right, went across in front
24 because we had taken off gotten out of the way so they
25 could park Roy and the SMC truck right there.

1 Q Were there also -- can you turn that again,
2 around again.

3 Were there also trucks lined up on the, on
4 the left side of the exit ramp as you -- as you come off
5 of the interstate on the southbound lane?

6 A No. There's no space right here to park. On
7 this part right here there's no space. So the last truck
8 that's parked right there, that's the last spot. I know
9 there was -- it was pull over here when I --

10 Q Again. Can you -- I'm sorry. I don't mean to
11 interrupt you.

12 A When I hooked up to the trailer, a truck that
13 was up here pulled out of the way so I moved over there.

14 Q But your recollection is that there was not --

15 A There were these two that you can see right
16 here.

17 Q And that would have been the last --

18 A That's the last one that's parked there. If
19 there was one behind that they'll run into him from
20 behind.

21 Q And when you all first got there, I assume -- do
22 you travel -- you're on a northbound traffic, do you go
23 up?

24 A We went up next exit, came back down and pulled
25 in there.

1 A The one that I drive?

2 Q Yes, sir.

3 A 2000 Peterbilt.

4 Q Do you have any recollection about what time it
5 was that you all left Houston on the way to Virginia?

6 A No, I was asleep at the time.

7 Q How long did it -- do you have any recollection
8 about how long it took you all to get up to the rest area?

9 MR. FRANKL: He's not asking you to
10 calculate. He's asking if you have a recollection as to
11 how long it took?

12 A Say about another day.

13 Q A day?

14 A Yeah.

15 Q Generally, how long does it take you to get from
16 Texas up to Virginia?

17 A With one driver it takes two and a half days.

18 Q But with multiple drivers it can be shorter?

19 A Yeah.

20 MR. SKAFF: That's all the questions I have
21 at this time. Thank you.

22 EXAMINATION

23 BY MR. DUNN:

24 Q Mr. Lozano, going back to some questions asked
25 by Mr. Skaff dealing with operating that Black

1 Freightliner truck on the trip to Virginia, no one from
2 SMC was operating that truck, right?

3 A No.

4 Q You agree with me?

5 A Yeah, I agree.

6 Q And you never worked for SMC Transport, have
7 you?

8 A No, I haven't.

9 Q That trip to Virginia around October 26th was
10 not for SMC Transport, correct?

11 A No, it was a favor that Sergio did for Roy.

12 Q On that day it was really like you said, it was
13 helping out Roy Salinas?

14 A Yeah.

15 Q And no one from SMC Transport went on the trip
16 with you, correct?

17 A No one.

18 Q You agree with me on that?

19 A Yes, sir.

20 Q No one from SMC transport was telling you what
21 to do on that trip up to Virginia, correct?

22 A Nobody told me. Nobody said anything.

23 Q Nobody from SMC Transport was giving you
24 instruction about where to go, what to do with this truck
25 up in Virginia, correct?

1 A Yeah.

2 Q You agree with me?

3 A Yeah.

4 Q You said you know who Sergio Cuellar is, right?

5 A Yeah.

6 Q Did you ever hear Sergio Cuellar talking to
7 anyone about this trip to Virginia and using the SMC
8 Transport vehicle?

9 A No.

10 Q You didn't talk to Sergio Cuellar about that,
11 did you?

12 A No.

13 MR. DUNN: Thank you very much.

14 MR. HEARN: Is that it?

15 MR. DUNN: For right now.

16 EXAMINATION

17 BY MR. HEARN:

18 Q Mr. Lozano, my name is David Hearn. I'm a
19 lawyer from Virginia. I represent Israel Martinez.

20 When you got to the rest stop in Virginia
21 after you helped unhook the SMC and Salinas units, did you
22 ever see Art Gutierrez get out and look at Roy Salinas's
23 disabled vehicle to check it out?

24 A No.

25 Q Now, he's a mechanic, right?